

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

DEMARIO MARKEL MITCHELL,

Plaintiff,

v.

TORRANCE AKINS,

Defendant,

No. 1:15CV189 SNLJ

**MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff's response to the Court's show cause order. Plaintiff has been unable to pay the filing fee because he lacks adequate funds. And he says he has not been able to file an amended complaint because he does not have access to a law library.

The Court will not dismiss this case because plaintiff is unable to afford the initial filing fee. Plaintiff should endeavor to pay it when he has the funds. He also may pay an initial filing fee of \$1.00.

Plaintiff should be able to file an amended complaint without looking up case law. The Federal Rules of Civil Procedure only require that a plaintiff write out a "short and plain statement of the claim showing that the [plaintiff] is entitled to relief . . ." Fed. R. Civ. P. 8(a). So, plaintiff only need describe the facts of the assault, i.e., the "how, what, when, where."

The Court reminds plaintiff that there are other requirements for pleading a case under 42 U.S.C. § 1983: **The filing of an amended complaint replaces the original complaint, and so he must include each and every one of his claims in the amended complaint.** *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). **Any claims from the original complaint that are not included in the amended complaint**

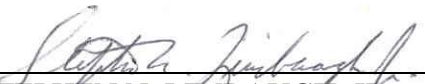
will be considered abandoned. *Id.* Plaintiff must allege how each and every defendant is directly responsible for the alleged harm. In order to sue defendants in their individual capacities, plaintiff must specifically say so in the complaint. If plaintiff fails to sue defendants in their individual capacities, this action may be subject to dismissal.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff must file an amended complaint within twenty-one days of the date of this Order.

**IT IS FURTHER ORDERED** that the Clerk is directed to mail plaintiff a prisoner civil rights complaint form.

Dated this 14<sup>th</sup> day of December, 2015.

  
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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE